

HOUSE BILL No. 1348

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-12.

Synopsis: Posting of false business reviews. Provides that a person shall not post or publish, or cause to be posted or published, on a consumer review site a defamatory review concerning an Indiana business. For purposes of this prohibition, defines a: (1) "consumer review site" as an Internet web site or an application that allows consumers to post reviews of businesses that provide or offer to provide goods or services to the public; and (2) "defamatory review" as a communication that: (A) is posted or published on a consumer review site; (B) concerns a business or certain aspects of the business; and (C) is false and injurious to the reputation of the business or certain aspects of the business. Provides that a person aggrieved by a violation of these provisions may bring an action in a court with jurisdiction. Provides that a court may award certain relief to a complainant who prevails in an action, including the greater of: (1) actual damages; or (2) liquidated damages of \$500 for each day that the defamatory review was posted on the consumer review site. Provides that in an action in which the complainant prevails: (1) the court shall send notice of the judgment to the owner or operator of the consumer review site on which the defamatory review was posted or published; and (2) the owner or operator of the consumer review site is liable to the complainant for liquidated damages of \$500 for each day that the defamatory review remains posted on the consumer review site, beginning on the seventh day after the date of the court's notice of the judgment.

Effective: July 1, 2016.

Culver

January 12, 2016, read first time and referred to Committee on Commerce, Small Business and Economic Development.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1348

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-12 IS ADDED TO THE INDIANA CODE AS
- 2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 3 2016]:
- 4 **ARTICLE 12. FALSE CONSUMER REVIEWS**
- 5 **Chapter 1. Definitions**
- 6 **Sec. 1. The definitions in this chapter apply throughout this**
- 7 **article.**
- 8 **Sec. 2. (a) "Consumer review site" means:**
- 9 **(1) an Internet web site; or**
- 10 **(2) an application;**
- 11 **that allows consumers to post reviews of businesses that provide or**
- 12 **offer to provide goods or services to the public.**
- 13 **(b) The term does not include an electronic mail program.**
- 14 **Sec. 3. "Defamatory review" means a communication that:**
- 15 **(1) is posted or published on a consumer review site;**
- 16 **(2) concerns a business or an aspect of the business, including**
- 17 **one (1) or more:**



- 1 (A) owners of the business;
- 2 (B) employees or agents of the business;
- 3 (C) physical locations from which the business provides or
- 4 offers to provide goods or services to the public; or
- 5 (D) goods or services provided or offered by the business;
- 6 and
- 7 (3) is false and injurious to the reputation of:
- 8 (A) the business; or
- 9 (B) an aspect of the business described in subdivision (2).
- 10 Sec. 4. "Indiana business" means a business that is
- 11 headquartered or has its principal place of business in Indiana.
- 12 Chapter 2. Prohibited Acts, Remedies, and Damages
- 13 Sec. 1. A person shall not post or publish, or cause to be posted
- 14 or published, on a consumer review site a defamatory review
- 15 concerning an Indiana business.
- 16 Sec. 2. (a) A person aggrieved by a violation of this chapter may
- 17 bring an action in a court with jurisdiction.
- 18 (b) A person shall, not later than thirty (30) days after filing a
- 19 complaint with a court in an action under this chapter, mail or
- 20 deliver a copy of the complaint to:
- 21 (1) the office of the attorney general; and
- 22 (2) the owner or operator of the consumer review site on
- 23 which the alleged defamatory review concerning an Indiana
- 24 business was posted or published.
- 25 (c) In an action under this chapter and on a proper showing, a
- 26 court may issue a permanent or temporary injunction, restraining
- 27 order, or declaratory judgment.
- 28 (d) The standards of proof and defenses set forth in IC 34-15-1
- 29 and IC 34-15-2 apply to an action brought under this chapter.
- 30 (e) In determining whether a person has posted or published, or
- 31 caused to be posted or published, a defamatory review concerning
- 32 an Indiana business, a court may, in an action under this chapter,
- 33 consider evidence of whether the person:
- 34 (1) visited one (1) or more physical locations from which the
- 35 Indiana business provides or offers to provide goods or
- 36 services to the public;
- 37 (2) purchased or consumed goods or services provided or
- 38 offered by the Indiana business;
- 39 (3) was offered goods or services by the Indiana business; or
- 40 (4) was otherwise a customer of the Indiana business.
- 41 (f) A court may award reasonable attorney's fees, litigation
- 42 expenses, and costs to a person who prevails in an action under this



chapter.

(g) A court may, in addition to fees, expenses, and costs under subsection (f), award any or all of the following to a complainant who prevails in an action under this chapter:

(1) Declaratory or equitable relief.

(2) The greater of:

(A) actual damages; or

(B) liquidated damages of five hundred dollars (\$500) per day for each day that the defamatory review concerning an Indiana business was posted or published on the consumer review site, payable by the person who posted or published, or caused to be posted or published, the defamatory review concerning the Indiana business.

(3) Punitive damages as the court determines appropriate.

(h) In any action under this chapter in which the complainant prevails, the court shall send notice of the judgment to the owner or operator of the consumer review site on which the defamatory review concerning an Indiana business was posted or published. The owner or operator of the consumer review site is liable to the complainant for liquidated damages of five hundred dollars (\$500) per day for each day that the defamatory review concerning an Indiana business remains posted or published on the consumer review site, beginning on the day that is seven (7) days after the date of the court's notice of the judgment. Liquidated damages under this subsection are in addition to any liquidated damages awarded by the court under subsection (g)(2)(B).

(i) This chapter does not provide a right of action against:

(1) an interactive computer service;

(2) a telephone company;

(3) a CMRS provider (as defined in IC 36-8-16.7-6);

(4) a cable operator (as defined in 47 U.S.C. 522(5)); or

(5) any other entity that primarily provides connectivity to an operator;

if the entity's equipment is used only to transport, handle, or retransmit information that violates this chapter and is not capable of blocking the retransmission of information that violates this chapter.

Sec. 3. The private right of action, remedies, and penalties established under this chapter are in addition to any other private right of action, remedies, and penalties available under any other state or federal law or at common law.

